

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROBERT BOLDEN, SR.,)
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Movant,)
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vs.) Case No. 4:10-CV-2288 (CEJ)
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UNITED STATES OF AMERICA,)
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Respondent.)

MEMORANDUM AND ORDER

Before the Court is the motion of the United States to reconsider the order granting movant Robert Bolden, Sr., leave to conduct discovery. Bolden has filed a memorandum in opposition and the issues are fully briefed.

Bolden brings this action pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. He filed a motion for leave to conduct discovery which the government opposed and which was denied as premature. Later, Bolden filed a second motion for discovery. After the government failed to object, the Court granted the motion. The government has now shown that its failure to object resulted from inadvertence and that it did not intend to concede the motion. Having considered the parties' arguments, the Court is persuaded that Bolden's second motion for discovery was granted improvidently.

Bolden's first discovery motion was denied because the extent to which there were disputed factual issues could not then be determined and, thus, "good cause" for discovery could not be established. Rule 6(a), Rules Governing Section 2255 Proceedings ("A judge may, for good cause, authorize a party to conduct discovery . . ." in proceedings under § 2255). The same circumstances are present now. The government has challenged the claims Bolden makes in his motion to vacate as either

procedurally barred, time-barred, or as refuted by the trial record. No determination has been made yet as to the facial adequacy of Bolden's claims or as to the factual basis for the claims. See Shaw v. United States, 24 F.3d 1040, 1043 (8th Cir. 1994) (evidentiary hearing not required "if the claim is inadequate on its face or if the record affirmatively refutes the factual assertions upon which it is based."). The Court believes that discovery should not be allowed before such a determination is made.

Accordingly,

IT IS HEREBY ORDERED that the motion of the United States to reconsider the April 4, 2014 discovery order [Doc. # 194] is granted.

IT IS FURTHER ORDERED that the portion of the April 4, 2014 order granting movant Robert Bolden, Sr., leave to conduct discovery is vacated.

IT IS FURTHER ORDERED that movant's motion for leave to conduct discovery [Doc. # 122] is denied.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 31st day of July, 2014.